(22)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 989

MAX GELDZAHLER, *Petitioner*,

v.

THE UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEN MCMAHON,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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The petitioner, Max Geldzahler, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered on April 5, 1944 (R.), affirming petitioner's conviction for violation of Sections 1593 (a), 1592, and 1591, Title 19, U. S. C. A.

OPINIONS BELOW.

The judgment of the District Court of the United States for the Southern District of Florida, Miami Division (R. 17,

18, 19), is not reported. The opinion of the Circuit Court of Appeals (R.), is not yet reported.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on April 5, 1944. The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by the Court on May 7, 1934.

QUESTIONS PRESENTED.

1. Whether petitioner smuggled or attempted to smuggle merchandise into the United States where within the confines of the Customs Inspection station diamonds were voluntarily delivered by petitioner to Customs officers for inspection and imposition of duty.

2. Whether Baggage Declaration and Entry Form of Treasury Department is the exclusive means of declaring as subject to duty diamonds held on the person of one about to enter the United States.

3. Whether failure to list on Baggage Declaration and Entry form of the Treasury Department diamonds held on the person of one about to enter the United States makes such form a false, forged, or fraudulent invoice or paper where the diamonds are voluntarily presented to customs officer for inspection.

STATUTES INVOLVED.

Section 1593, United States Code, Title 19, Act of June 17, 1930, 46 Stat. 751 Section 1591, United States Code, Title 19, Act of June 17, 1930, 46 Stat. 750, as amended Aug. 5, 1935, 49 Stat. 527, Section 1592, United States Code, Title 19, Act of June 17, 1930, 36 Stat. 750, as amended August 5, 1935, 49 Stat. 527. See Appendix.

STATEMENT.

Petitioner was indicted on April 8, 1943, in the United States District Court for the Southern District of Florida, Miami Division, on six counts charging smuggling or attempt to smuggle a certain lot of diamonds into the United States. Counts 4 and 6 were dismissed (R. 80). On counts 1, 2, 3, and 5 petitioner was found guilty by a jury on July 29, 1943 (R. 17). He was sentenced to one year and one day on each of counts 1, 2, 3, and 5, sentences to run concurrently. A fine of $1000 also was imposed on each of these counts, defendant to be imprisoned until payment of said fine or otherwise discharged as provided by law, it being further provided that on payment of $1000 on any one of the counts the balance of the fines on the remaining counts to be remitted (R. 18). In per Curiam opinion the Circuit Court of Appeals for the Fifth Circuit on April 5, 1944, affirmed the judgment of the District Court (R.). Petitioner is engaged in the business of importing diamonds having an office in New York City (R. 92). He had in Havana, Cuba, a cousin Chaim Geldzahler, who with his wife and son were applicants for immigration visas to come to the United States (R. 100). Petitioner visited this cousin in Havana four times in the year 1941 (R. 93) and learned that the cousin had in his possession a large lot of small diamonds which he had brought with him when he fled from Antwerp (R. 95, 97), which diamonds the cousin was hiding from the notice of the Cuban officials (R. 101) and hoped to take to the United States when he came to this country (R. 101).

According to the testimony of the plaintiff he with his cousin appeared before the American Consul at Havana and the vice consul and offered to leave these diamonds with the Consular officials to be forwarded to the United States (R. 98-102, 230-240). The record shows that these officials testified that they had no knowledge of such incident (R. 203). On returning to the United States, petitioner filled out a customs form declaring the articles in his baggage

subject to inspection and duty, but did not include in that list the diamonds which he claimed his cousin had given him to take to the United States (R. 103). The vessel arrived at Miami on January 7, 1942, and there he appeared before a customs official with the declaration which he had made out at the time of his departure from Havana, Cuba. His baggage was then taken by a redcap, and petitioner followed to the exit where was stationed a customs guard (R. 105). The guard questioned petitioner who told the guard that he had cigars on his person on which duty had not been paid. Asked if he had anything else he took from his pockets packages containing a large number of small diamonds. Thereupon he was taken to another room and questioned by several customs officials, following which he was placed under arrest and the diamonds seized. When stopped by the guard he was still inside the customs barrier (R. 106). In his statement when questioned by the customs officials he testified that he had purchased the diamonds in Havana, Cuba, from a person named Jack or Jacques. At his trial he repudiated the statements made to the customs officials and stated that his answers to the questions of the customs officials were false regarding the source from which he acquired the diamonds. However, he insisted that he had no intention of trying to evade payment of duty on the diamonds in question and voluntarily gave them up to the customs officials while inside the customs barrier. The baggage declaration and Entry form, Customs form 6063, showed that petitioner listed only several small articles not subject to duty. Petitioner claimed that in the past he had imported diamonds on which he paid duty, the details of the payment of duty being attended to by a customs broker in New York who handled such business for petitioner.

At the trial counsel for petitioner demurred to the indictment which demurrer was overruled by the Court on July 24, 1943 (R. 12, 13). Assignment of errors alleged were that (1) the Court erred in denying motion for new

trial, (2) in overruling the defendant's demurrer to the indictment, (3) in denying defendant's motion for directed verdict made at the close of the entire case, (4) denying defendant's motion in arrest of judgment, and (5) in refusing to give numerous charges requested by the defendant (R. 307 et seq.). In order dated July 30, 1943, the Court ordered that the 10797 cut diamonds of appraised value of $28,014, being an exhibit in this case, were to be delivered to the Collector of Customs to be safely kept pending a final disposition of the rights of the various parties to said diamonds (R. 323-344).

REASONS FOR GRANTING THE WRIT.

Whatever may be the real facts as to manner in which the diamonds came into the possession of petitioner in Havana, Cuba, a serious question is presented in several aspects of this case bearing on the intent of petitioner which should be settled by this court. In refusing to grant certain charges requested by plaintiff, thorough consideration does not appear to have been given to the question of whether even though an original intent to smuggle merchandise into this country had been in mind an actual smuggling has not been committed if before leaving the customs station the dutiable goods have been voluntarily delivered to a customs officer for inspection and determination of amount of duty. It is important, also, to have a ruling on the point whether a baggage declaration and entry form is the exclusive method of presenting dutiable merchandise to the attention of customs officials.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

This is not a case where as so often occurs in attempts to smuggle narcotics into this country the drugs are carefully hidden from the inspection of the customs officials and are discovered only after a careful examination of the person

or baggage of the incoming passenger, or, in the case of crew members, hidden in the vessel itself. In the instant case petitioner ostentatiously displayed cigars in excess of those listed in his baggage declaration and in addition handed to the customs officers the various packages of diamonds. He was still inside the customs station and it seems immaterial whether he handed the packages of diamonds to the first customs officer who examined his bags or, as he actually did, gave the diamonds to the final and last customs guard at or near the exit of the station. Conceding for the sake of argument that at the time he filled out the baggage declaration at the steamship office when he took passage at Havana he had the intent to avoid payment of duty on the diamond nevertheless when and if he did change his mind he had not smuggled or attempted to smuggle the diamonds into this country. The discovery of the diamonds in this case was not the result of a search by customs officials, as in the case of *Ritterman* v. *United States*, 273 U. S. 261, where a deliberate attempt was made to enter with a quantity of diamonds without payment of duty, which diamonds were finally found by a customs guard hidden in a bag during the time the traveler was undressing before the guard. In that case Mr. Justice Holmes, in his opinion stated that the traveler could not purge himself of the consequences of his fraud by confessing when he saw that he was on the point of being discovered or, as might have been found, after he had been. To the same effect is the case of *Newman* v. *United States*, 276 F. 798. However, in *Keck* v. *United States*, 172 U. S. 434, the facts are similar to those present in the instant case. The court stated that mere acts of concealment of merchandise do not, taken by themselves, constitute smuggling and that if the merchandise is delivered to the customs officer before passage through the lines of the customs authorities there is no offense under the law. See, also, *United States* v. *One Pearl Chain*, 139 F. 510; *United States* v. *One Pearl Necklace*, 111 F. 164; and *United States* v. *One Trunk*, 184 F. 317.

The *J. Duffy*, 14 F. (2d) 426, reversed in *The J. Duffy and United States* v. *2802 cases of Scotch Whiskey*, 18 F. (2d) 754, had reference to the capture of a British schooner within the territorial waters of the United States and charged with attempted smuggling, which case is distinguished from the case of *Keck v. United States, supra.*

CONCLUSION.

For the reasons stated it is respectfully submitted that this petition for writ of certiorari should be granted.

BRIEN MCMAHON,
Counsel for Petitioner.

APPENDIX.

Statutes Involved.

Sec. 1593. Smuggling and clandestine importations—Fraud on revenue.

(a) If any person knowingly and willfully, with intent to defraud the revenue of the United States, smuggles, or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper, every such person, his, her, or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding $5,000, or imprisoned for any term of time not exceeding two years, or both, at the discretion of the court.

Importation contrary to law.

(b) If any person fraudulently or knowingly imports or brings into the United States, or assists in so doing, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding $5,000 or less than $50, or be imprisoned for any time not exceeding two years, or both.

Presumptions.

(c) Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods such possession shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury. (June 17, 1930, c. 497, Title IV, Sec. 593, 46 Stat. 751.)

Sec. 1591. Fraud; personal penalties.

If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces, or attempts to enter or introduce, into the commerce of the

United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 1485 of this title (relating to declaration on entry) without reasonable cause to believe the truth of such statement, or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement; or is guilty of any willful act or omission by means whereof the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such person or persons shall upon conviction be fined for each offense a sum not exceeding $5,000, or be imprisoned for a time not exceeding two years, or both, in the discretion of the Court: *Provided*, That nothing in this section shall be construed to relieve imported merchandise from forfeiture by reason of such false statement or for any cause elsewhere provided by law. (June 17, 1930, c. 497, Title IV, Sec. 591, 46 Stat. 750; Aug. 5, 1935, c. 438, Title III, Sec. 304 (a), 49 Stat. 527.)

Sec. 1592. Same; penalty against goods.

If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces, or attempts to enter or introduce into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 1485 of this title (relating to declaration on entry) without reasonable cause to believe the truth of such statement, or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth

of such statement, whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration affidavit, letter, paper, or statement; or is guilty of any willful act or omission by means whereof the United States is or may be deprived of the lawful duties or any portion thereof accruing upon the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise or the value thereof, to be recovered from such person or persons, shall be subject to forfeiture, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates. The arrival within the territorial limits of the United States of any merchandise consigned for sale and remaining the property of the shipper or consignor, and the acceptance of a false or fraudulent invoice thereof by the consignee or the agent of the consignor, or the existence of any other facts constituting an attempted fraud, shall be deemed, for the purposes of this section, to be an attempt to enter such merchandise notwithstanding no actual entry has been made or offered. (June 17, 1930, c. 497, Title IV, Sec. 592, 46 Stat. 750; Aug. 5, 1935, c. 438, Title III, Sec. 304 (b), 49 Stat. 527.)

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 330) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 5, 1944 (R. 331). The petition for a writ of certiorari was filed May 10, 1944. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether evidence showing that petitioner failed to declare (in his baggage declaration form or otherwise) diamonds concealed on his person although he disclosed the diamonds when searched by customs officials, is sufficient to sustain petitioner's conviction for smuggling.

STATUTES INVOLVED

The pertinent provisions of the Act of June 17, 1930, are printed in the Appendix, *infra*, pp. 9–10.

STATEMENT

Petitioner was indicted in the United States District Court for the Southern District of Florida on six counts charging violations of various sections of the customs law by the importation of 10,797 cut diamonds of an appraised value of $28,014.00 (R. 1–8). The first count charged that, in violation of 19 U. S. C. 1593 (a), petitioner unlawfully, wilfully, and knowingly, with intent to defraud the revenue of the United States, smuggled into the United States from a foreign country diamonds which should have been but were not invoiced according to law (R. 1–2). The

second count charged that in violation of the same section petitioner, with intent to defraud the revenue, passed and attempted to pass through the customs a false, forged, and fraudulent document, to wit, a baggage declaration and entry form which purported to be a declaration of all articles purchased by petitioner abroad, but which in fact failed to list the diamonds (R. 2–3). The third count charged a violation of 19 U. S. C. 1593 (b) in that petitioner fraudulently and knowingly imported the diamonds from Cuba contrary to law without entering or declaring them on his baggage declaration form or otherwise (R. 3–4). The fifth count charged a violation of 19 U. S. C. 1591 in that petitioner attempted to introduce the imported diamonds into commerce by means of a fraudulent statement, to wit, his baggage declaration form in which he failed to declare the diamonds (R. 6–7). Petitioner was found guilty on these counts (R. 17)[1] and was sentenced to imprisonment for one year and a day and to pay a fine of $1,000 on each count, the sentences to run concurrently and the payment of the fine on any one count to discharge the fines on the remaining counts (R. 17–19). On appeal, the judgment was affirmed *per curiam* (R. 331).

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[1] The fourth and sixth counts, which were also laid under 19 U. S. C. 1591 (R. 4–6, 7–8), were dismissed at the close of the Government's case (R. 80).

The evidence for the Government may be summarized as follows:

Petitioner, a wholesale diamond merchant, arrived at Miami, Florida, on January 7, 1942, on a return trip from Havana, Cuba (R. 27, 55). He delivered to a customs inspector a baggage declaration and entry form which listed as articles purchased abroad, liquor, cigars, and cosmetics (R. 23, 27–28; Ex. 1, R. 26, 220–221). The inspector asked petitioner whether he had declared everything that he had acquired in a foreign country; and petitioner replied in the affirmative (R. 28).[2]

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[2] The baggage declaration and entry form on its face contains the following printed statement (R. 220):

"I further declare that I have fully set forth herein all articles acquired abroad, used or unused, whether purchased or otherwise obtained, contained in my baggage or on my person or in the baggage of or on the persons named above accompanying me and all such articles not accompanying me for which free entry under the $100 residents' exemption is to be claimed; *that none of the said articles is for sale, is being imported and declared as an accommodation to another, to be used in business, or was acquired otherwise than merely as an incident of my foreign journey*, except as noted hereon, that the values as set forth represent the prices actually paid for articles purchased, or in the case of articles otherwise obtained, the fair value to the best of my knowledge and belief; that this declaration is made with the knowledge that *failure to declare any article acquired abroad or any false statement in regard thereto will subject me to personal penalties and the articles involved to seizure.* I further declare that *I have not during the past 30 days received an exemption from duty* such as is allowed a returning resident of the United States, except as follows: * * *."
[Italics as in original.]

The inspector made a routine examination of petitioner's baggage and stamped the baggage to indicate that inspection had been completed (R. 28–29). Petitioner then proceeded to leave the customs enclosure and in so doing was required to pass the guard stationed at the exit (R. 40). The guard noticed a bulge in petitioner's breast pocket and asked him to produce the contents. Petitioner took out some papers and 13 cigars. In response to a question by the guard, he admitted that the cigars had not been declared. (R. 40.) When asked whether he had anything else on his person which he had not declared, he made no answer. The guard then started to search petitioner's left pocket and, as he did so, petitioner took from his right trouser pocket a package which he said contained diamonds. (R. 40–41.) In response to questioning by the guard, petitioner stated that the diamonds had not been declared and that he had paid about $10,000 for them (R. 41). Petitioner was subsequently taken to the office of a special agent and there, in the presence of several customs officers, the package which he had handed to the guard was opened and found to contain diamonds enclosed in 2 cylindrical rubber tubes (R. 41, 49–50, 54). Petitioner told the customs officials at that time that he had purchased the diamonds in Cuba from a man named Jack or Jacques for $14,600 (R. 55, 60–61).

ARGUMENT

Since the prison sentences imposed upon petitioner are to run concurrently, and on payment of the fine imposed on any count the fines on the other counts are to be remitted, the judgment must be sustained if the conviction is proper as to any one count. *Hirabayashi* v. *United States,* 320 U. S. 81, 85, 105; *Whitfield* v. *Ohio,* 297 U. S. 431, 438; *Brooks* v. *United States,* 267 U. S. 432, 441; *Pierce* v. *United States,* 252 U. S. 239, 252–253; *Abrams* v. *United States,* 250 U. S. 616, 619.

As to the first count, charging smuggling in violation of 19 U. S. C. 1593 (a), the facts of this case bring it squarely within the ruling of this Court in *United States* v. *Ritterman,* 273 U. S. 261, where a conviction under an earlier equivalent statute was sustained although the defendant in that case admitted while his person was being searched that he had concealed diamonds in his baggage. The Court there stated (p. 269): "He could not purge himself of the consequences of his fraud by confessing when he saw that he was on the point of being discovered or, as might have been found, after he had been."[3] See also *New-*

[3] In the *Ritterman* case the Court distinguished the earlier decision in *Keck* v. *United States,* 172 U. S. 434, upon which petitioner relies (Pet. 6), on the ground that the goods involved in that case had not yet been landed. Here, however, as in the *Ritterman* case, the goods "were clandestinely introduced upon the soil of the United States" (273 U. S., at 268).

man v. *United States,* 276 Fed. 798 (C. C. A. 2), certiorari denied, 258 U. S. 623. Contrary to petitioner's contention (Pet. 5–6; see also Pet. 4), the discovery of the diamonds in this case was as much the result of a search by customs officials as was the discovery in the *Ritterman* case. The testimony establishes (*supra,* pp. 4–5) that petitioner did not disclose the package until the guard had started to search his person. If there were any doubt from the testimony as to whether this disclosure was made at a time when petitioner knew that he was on the point of being discovered, within the rule of the *Ritterman* case, that doubt was resolved by the verdict of the jury, for the trial judge in his charge specifically instructed the jury that an incoming passenger who had not declared merchandise might voluntarily change his mind before completing passage through the customs and would thereby purge himself of wrongdoing, but that he could not purge himself of such unlawful purpose by confessing when he was at the point of being discovered (R. 211).[4]

[4] In the light of this charge it is clear that the case does not present the question which petitioner seeks to raise as to counts 2, 3, and 5 (Pet. 2); that is, whether a baggage declaration which does not disclose merchandise brought in from abroad is a false or fraudulent document if such merchandise is voluntarily offered for inspection. For the jury found in effect that there was no voluntary disclosure of the diamonds. Nor does the case present the other question sought to be raised by petitioner as to those counts (Pet. 2, 4); i. e., whether a baggage declaration and entry form is

Here, as in the *Ritterman* case, the jury found that "repentance came too late."

CONCLUSION

The decision below is correct, and the case presents no conflict of decisions nor any question of general importance. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.

TOM C. CLARK,
Assistant Attorney General.

ROBERT S. ERDAHL,
Special Assistant to the Attorney General.

BEATRICE ROSENBERG,
Attorney.

MAY 1944.

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the exclusive means of declaring articles subject to duty. The trial judge did not charge that the baggage declaration form was the exclusive method of declaring merchandise, but stated merely that petitioner was entitled so to declare the diamonds but that if he did not do so he was under a duty to make legal declaration of his possession in some other manner (R. 211). Moreover, as to count 2, the judge charged the jury that although petitioner "could have made a separate entry of the merchandise, the gist of this count is that the defendant did make out and use this particular form, No. 6063, as a complete declaration of his dutiable merchandise and that he thereby defrauded the United States revenue * * *." (R. 204).

APPENDIX

Title IV, Section 591, of the Tariff Act of June 17, 1930, c. 497, 46 Stat. 750, as amended by the Act of August 5, 1935, c. 438, Title III, paragraph 304 (a), 49 Stat. 527, provides in pertinent part as follows (19 U. S. C. 1591):

> If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 485 of this Act (relating to declaration on entry) without reasonable cause to believe the truth of such statement, * * * shall upon conviction be fined for each offense a sum not exceeding $5,000, or be imprisoned for a time not exceeding two years, or both, in the discretion of the court: * * *.

Title IV, Section 593, of the Tariff Act of June 17, 1930, 46 Stat. 751, 19 U. S. C. 1593, reads in part as follows:

> (a) *Fraud on Revenue.*—If any person knowingly and willfully, with intent to de-

fraud the revenue of the United States, smuggles, or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper, every such person, his, her, or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding $5,000, or imprisoned for any term of time not exceeding two years, or both, at the discretion of the court.

(b) *Importation Contrary to Law.*—If any person fraudulently or knowingly imports or brings into the United States, or assists in so doing, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding $5,000 nor less than $50, or be imprisoned for any time not exceeding two years, or both.

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